

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

December 20, 2005

IN RE:

ENFORCEMENT OF INTERCONNECTION AGREEMENT  
BETWEEN BELL SOUTH TELECOMMUNICATIONS, INC.  
AND ITC^DELTACOM COMMUNICATIONS, INC.

DOCKET NO.  
02-01203

ENFORCEMENT OF INTERCONNECTION AGREEMENT  
BETWEEN BELL SOUTH TELECOMMUNICATIONS, INC.  
AND XO TENNESSEE, INC.

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**ORDER APPROVING BELL SOUTH TELECOMMUNICATIONS, INC.'S  
VOLUNTARY DISMISSAL WITH PREJUDICE OF  
ITS COMPLAINT AGAINST XO TENNESSEE, INC.  
AND CLOSING TRA DOCKET NO. 02-01204**

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This matter came before Chairman Ron Jones, Director Deborah Taylor Tate and Director Sara Kyle of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on November 21, 2005, for consideration of the request of BellSouth Telecommunications, Inc. ("BellSouth") and XO Tennessee, Inc. ("XO") to approve BellSouth's voluntary dismissal with prejudice of the *Complaint of BellSouth Telecommunications, Inc. to Enforce Interconnection Agreement and Request for Expedited Proceedings* filed against XO ("*Complaint Against XO*").

**BACKGROUND**

On November 5, 2002, BellSouth filed the *Complaint Against XO* in Docket No. 02-01204.<sup>1</sup> In the *Complaint Against XO*, BellSouth sought to enforce a provision of an amendment to its interconnection agreement with XO, which BellSouth asserted entitled it to audit XO's records to verify the type of traffic being placed over combinations of loop and transport network elements.

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<sup>1</sup> Director Ron Jones, Director Deborah Taylor Tate and Director Pat Miller were assigned to Docket No. 02-01204

According to the *Complaint Against XO*, XO refused to allow the audit in contravention of their interconnection agreement. On December 5, 2002, XO filed the *Answer and Counter-Complaint of XO Tennessee, Inc.* (“*Counter-Complaint*”), arguing that pursuant to the interconnection agreement, BellSouth could only conduct an audit of the Enhanced Extended Loops (“EELs”) as reasonably necessary to determine whether the circuits met significant local use requirements. XO requested that the *Complaint Against XO* be dismissed and that the Authority require BellSouth to provide the TRA notice of any future audit requests, along with the reasons therefore. BellSouth filed a Response to the *Counter-Complaint* on January 6, 2003.

Also on November 5, 2002, BellSouth filed an identical complaint against ITC^DeltaCom Communications, Inc. (“DeltaCom”) in TRA Docket No. 02-01203. DeltaCom also filed an answer and counter-complaint on December 5, 2002. Because these two dockets raised identical issues, the panels assigned to Docket No. 02-01203 and Docket No. 02-01204 voted unanimously to consolidate the dockets into Docket No. 02-01203 at the regularly scheduled Authority Conference held on November 18, 2002. Since that time, filings regarding both complaints have been made in Docket No. 02-01203; however, Docket No. 02-01204 has not been closed. At a regularly scheduled Authority Conference held on January 27, 2003, the panel assigned to Docket No. 02-01203 voted unanimously to convene a contested case and to appoint the Authority’s General Counsel or his designee to serve as Pre-Hearing Officer to hear preliminary matters and to set a procedural schedule to completion.

On December 22, 2003, BellSouth filed a motion for summary judgment and XO and DeltaCom filed a joint motion for summary judgment. The Pre-Hearing Officer heard oral arguments on the motions for summary judgment on January 22, 2004. In her *Report and Recommendation of Pre-Hearing Officer*, the Pre-Hearing Officer recommended that summary judgment in favor of XO and DeltaCom be granted in part. The Pre-Hearing Officer recommended that the panel find that BellSouth was not required to articulate a justification prior to the

commencement of an audit conducted pursuant to the terms of the interconnection agreements and that the interconnection agreements allowed for an audit of only converted EELs. In addition, the Pre-Hearing Officer recommended that BellSouth be required to submit for TRA approval the letter of engagement between itself and its independent auditor and a proposed methodology or procedure for conducting each audit of converted EELs. The *Report and Recommendation of Pre-Hearing Officer* was approved by the voting panel assigned to this docket at a regularly scheduled Authority Conference held on March 22, 2004.<sup>2</sup>

On August 2, 2004, BellSouth filed a letter of engagement and a description of the methodology with the Authority and requested that a new Hearing Officer<sup>3</sup> be appointed to address any remaining issues. XO and DeltaCom concurred with the request for a new Hearing Officer and requested that a status conference be convened. At a regularly scheduled Authority Conference held on April 4, 2005, the panel assigned to this docket voted unanimously to delegate to the Hearing Officer the authority to dispose of the remaining issues in this matter. In addition, the panel requested that the Hearing Officer dispose of the issues within sixty (60) days.

At a status conference held on May 17, 2005, the Hearing Officer directed that BellSouth file its audit proposal and brief in this docket by May 23, 2005, and that XO and DeltaCom file their responses and briefs thereto by June 3, 2005. On May 23, 2005, the parties filed a notice that BellSouth and XO had reached a tentative settlement resolving the issues in this docket. Following numerous extensions in the procedural schedule, on October 10, 2005, BellSouth and XO notified the Authority that they had reached a settlement in this docket and in Docket No. 04-00306. On October 12, 2005, BellSouth and XO filed a letter ("Joint Request") with the Authority stating that, as part of the settlement agreement, BellSouth had agreed to voluntarily dismiss, with prejudice, its *Complaint Against XO* seeking an audit of XO's EEL circuits and requesting that the Authority accept this dismissal simultaneously with the dismissal, with prejudice, of XO's complaint against BellSouth in

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<sup>2</sup> *Order Approving Report and Recommendation* (September 29, 2004)

<sup>3</sup> The Pre-Hearing Officer had left the Authority

Docket No. 04-00306. The parties clarified that BellSouth's *Complaint Against DeltaCom* was not part of the settlement and should not be dismissed.

**NOVEMBER 21, 2005 AUTHORITY CONFERENCE**

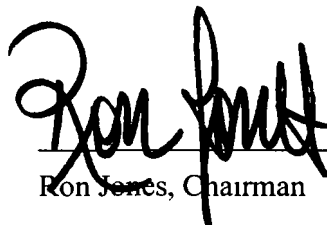
At a regularly scheduled Authority Conference held on November 21, 2005, the panel voted unanimously to approve the voluntary dismissal with prejudice of BellSouth's *Complaint Against XO* and to close Docket No. 02-01204. However, the panel ordered Docket No. 02-01203 to remain open because BellSouth's *Complaint Against DeltaCom* is ongoing.

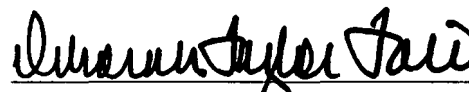
**IT IS THEREFORE ORDERED THAT:**

1 The Joint Request to approve BellSouth's voluntary dismissal with prejudice of the *Complaint of BellSouth Telecommunications, Inc to Enforce Interconnection Agreement and Request for Expedited Proceedings* filed against XO Tennessee, Inc is granted.

2. TRA Docket No. 02-01204 is closed

3 Nothing herein shall affect the *Complaint of BellSouth Telecommunications, Inc. to Enforce Interconnection Agreement and Request for Expedited Proceedings* filed against ITC^DeltaCom Communications, Inc.

  
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Ron Jones, Chairman

  
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Deborah Taylor Tate, Director

  
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Sara Kyle, Director